

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:08-cr-294

v

HON. JANET T. NEFF

JOHNNIE RANDELL GRIGGS,

Defendant.

ORDER

Pending before the Court is the Government's Motion for Reduction of Sentence (Dkt 32) pursuant to Federal Rule of Criminal Procedure 35(b). Defendant has filed a Notice of Concurrence in the Motion (Dkt 34). The Court has reviewed the Motion and finds a formal hearing unnecessary. FED. R. CRIM. P. 43(b)(4).

In April 2009, defendant pled guilty to a charge of felon in possession of a firearm pursuant to a written plea agreement. Under the plea agreement, defendant agreed to cooperate with the government concerning other investigations. On August 17, 2009, the Court sentenced defendant to 30 months of imprisonment, to be followed by three years of supervised release.

Rule 35(b)(1) provides that upon the Government's motion, the Court may reduce a sentence, "if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person." Rule 35(b)(3) provides that "[i]n evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance."

The Government recommends a reduction of sentence based on Defendant's substantial assistance to the government both before and after sentencing. The Government notes that defendant provided substantial assistance in the investigation of five unsolved homicides prior to sentencing, for which the Court granted a four-level reduction in defendant's offense level pursuant to United States Sentencing Guideline § 5K1.1. The Government further states that after sentencing, defendant provided information instrumental in obtaining murder charges in a state case, *People v. Torres*, Kent County Circuit Court No. 09-13150-FC, and he provided testimony that was "very helpful" in the prosecution and conviction of Torres for second degree murder (Gov. Br. 2, Ex. 1). Because of defendant's substantial assistance, the Government recommends a further reduction of two levels pursuant to Rule 35(b)(1), which would reduce the recommended Guidelines range to 18 to 24 months.

Rule 35 motions are governed by the same substantial assistance factors considered under § 5K1.1. *See U.S. v. Moran*, 325 F.3d 790, 793 (6th Cir. 2003). Those factors are: (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into account the government's evaluation of the assistance rendered; (2) the truthfulness, completeness and reliability of the information or testimony provided; (3) the nature and extent of the defendant's assistance; (4) any injury suffered or any danger or other risk of injury to defendant or his family resulting from the assistance; and (5) the timeliness of the defendant's assistance.

Upon review of defendant's assistance, the Court finds that each factor is present in this case in some degree and that a reduction of sentence is warranted. Defendant's cooperation has been consistent and extensive both before and after sentencing. Defendant offered substantial assistance in the investigation of five unsolved homicides. Defendant subsequently provided direct and

valuable assistance to the Government in obtaining charges and a conviction in a second-degree murder case.

After considering the § 5K1.1 factors and the extent of defendant's assistance, the Court has determined that the Government's motion should be granted, and the Court will apply a two-level reduction to defendant's adjusted offense level. This reduction results in a new advisory Guideline range of 18 to 24 months. In its discretion, the Court finds appropriate a sentence of eighteen (18) months. Therefore,

IT IS HEREBY ORDERED that the Motion for Reduction of Sentence (Dkt 32) is **GRANTED**, and defendant's term of imprisonment is reduced to eighteen (18) months. An Amended Judgment shall issue in accordance with this Order.

Date: September 16, 2010.

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge